

December 20, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Bob Harris Oil Company

Date of Filing: December 5, 2005

Case No.: TEE-0028

On December 5, 2005 Bob Harris Oil Company (Harris) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the Harris request should be granted.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ This authority was created in response to the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

Form EIA-782B requests information from resellers and retailers of motor gasoline, No. 2 distillates, propane, and residual fuel oil. The form requests volume and price information for retail and wholesale sales.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B². The form allows reporting volumes in thousands of gallons. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.³

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."⁴ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;⁵ the only person capable of preparing the report is ill and the firm cannot afford to hire

² Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

³ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁴ 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

⁵ *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

outside help;⁶ extreme or unusual circumstances disrupt a firm's activities;⁷ and a combination of factors render the reporting requirement an undue burden.⁸

At the same time, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.⁹ Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief.¹⁰ If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.¹¹

III. The Harris Application for Exception

Harris is a small retailer of motor gasoline located in Cleburne, Texas and was selected by EIA as a member of a sample group required to file Form EIA-782B beginning in August 2004. According to its submission, there are six employees located at the central office, but one of the employees suffers from a serious illness, and another is assisting with his care.¹² As a result, Harris has encountered difficulty in maintaining its business operations.

⁶ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three-month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

⁷ *Little River Village Campground Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. Of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

⁸ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

⁹ *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

¹⁰ See Section 10 of General Instructions to Form EIA-782B.

¹¹ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

¹² *Bob Harris Oil Application for Exception*, submitted to OHA on December 5, 2005.

In order to fully consider the Harris request and solicit any pertinent additional information, we contacted the firm by telephone. We were advised that, as a result of the employee's illness, the firm is severely short-handed and overwhelmed by the workload.¹³

IV. Analysis

We have carefully examined the Harris Application for Exception and have concluded that exception relief is warranted. The firm has experienced drastic changes in recent periods and is struggling to maintain its business operations with limited personnel. Accordingly, the requirement to prepare and file Form EIA-782B at this point would be unduly burdensome. In making this determination, we have considered the public interest in the information in the firm's EIA-782B, but concluded that the firm's personnel shortage warrants a temporary exception until November 2006.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Bob Harris Oil Company, Case No. TEE-0028, be, and hereby is granted as set forth in Paragraph (2) below.
- (2) Bob Harris Oil Company is relieved of the requirement to file the EIA-782B report for the period of November 2005 to November 2006.

George B. Breznay
Director
Office of Hearings and Appeals

Date: December 20, 2005

¹³ Telephone conversation between Ronald D. Hester, OHA, and Martha Harris, Bob Harris Oil Co., December 6, 2005.